

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10463 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
2. To be referred to the Reporter or not? YES
3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? NO

BANASKANTHA DIST CENTRAL CO OPBANK LTD

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner
MS KUSUM M SHAH for Respondent No. 6
Mr. M.R. Anand, learned Government Pleader, with Ms.
Harsha Devani, learned Assistant Government Pleader for
respondents Nos. 1 to 3.

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 08/04/96

ORAL JUDGEMENT

Petitioner is a District Central Cooperative Bank Limited. By order dated 7th December 1995, respondent No.1, State of Gujarat, nominated Shri Hiralal Jagmal Joshi, Shri Hathibhai Chelabhai Vaghela and Shri Parbatbhai S. Patel as members of the Committee of the

petitioner-Bank in exercise of its power under Section 80(1) of the Gujarat Cooperative Societies Act, 1961 ("Act" for short). This order dated 7th December 1995 (at Annexure "A" to the petition) is the subject matter of challenge in this Special Civil Application.

It has been contended by the learned counsel for the petitioner that the condition precedent for exercise of power under Section 80(1) of the Act is that either the State Government has subscribed to the share capital of that society, whether directly or through another society, or must have guaranteed repayment of the principal of and payment of interest on, debentures issued by it or the State Government must have guaranteed repayment of the principal of and payment of interest on the loans raised by the society concerned. As none of the of the conditions exists in the present case, the State Government has no authority to nominate any member on the Committee of the petitioner-bank. It was also contended that it is not a case in which resort has been taken to exercise of power under sub-section (2) of Section 80 of the Act, inasmuch as, as per the law laid down by this Court, for exercise of power under sub-section (2) of Section 80 of the Act, the State Government is under obligation to afford an opportunity of hearing before nominating its representative on the Committee of any society in the public interest.

So far as the second contention of the learned counsel for the petitioner about the action being not traceable to exercise of power under sub-section (2) of Section 80 of the Act is concerned, the respondents do not join issue.

However, Mr. M.R. Anand, learned Government Pleader, contends that, from the facts and circumstances of the present case, it is apparent that the State Government stands in a position of guarantor for repayment of loan raised by the society. As per contention by its letter dated 26th September 1992, the National Bank for Agriculture and Rural Development ("NABARD" for short), established under the National Bank for Agriculture And Rural Development Act, 1981, (hereinafter referred to as "Act of 1981") had sanctioned a medium-term loan on account of failure of Kharif 1991 crops by extending credit limit upto 12443.04 lakhs to the State Cooperative Bank under Section 22 of the Act of 1981. Under clause (xi) of the said sanction letter, the State Cooperative Bank was entitled to draw on the above limit of Rs.12443.04 lakhs, to an extent not exceeding 60% of the amount actually converted amount of the due of

the Societies affiliated to the concerned central cooperative banks and which are affected by conditions of famine/scarcity due to natural calamity of the evaluated financial assistance for assisting the famine affected areas. As per the Schedule appended, as regards the total base level conversion amount in respect of areas catered by the relevant district central cooperative banks respectively, separate amount was shown. It was stipulated that, while 60% of the required amount shall be contributed by the NABARD by way of credit facility to the State Cooperative Bank, balance 40% shall be provided by the State Government, State Cooperative Bank and concerned central cooperative bank in the ratio of 15%:10%:15%. Under clause (xii), it was stipulated that the State Cooperative Bank shall utilise the amount so withdrawn in such a manner that they are used by the concerned central cooperative bank only for advancing medium-term loans to affiliated primary credit societies mentioned in clause (xi) for enabling them to repay the short-term loans taken by them from the central cooperative banks for financing seasonal agricultural operations. It was further stipulated under clause (xiii) that the State Cooperative Bank shall ensure that the primary credit societies shall, in turn, advance medium term loans to their individual members only to enable them to repay the short-term loans taken by them from the said societies for financing seasonal agricultural operations. Under clause (xv), it was stipulated that separate accounts shall be maintained by the State Cooperative Bank and the central cooperative banks in respect of loans made or received by them for the purposes referred to in clause (xii) so as to distinguish them from all other loans or advances received or granted by them. It was further stipulated that the National Bank was authorized to depute its officers to inspect the State Cooperative Bank, the Central Cooperative Banks and the societies affiliated to them availing of or assisted by this accommodation.

From the aforesaid terms and conditions of the loan sanction letter of the NABARD, it is urged that, if the scheme of loan is viewed in its proper perspective, it was a loan advanced to the District Central Cooperative Bank by NABARD through the agency of the State Cooperative Bank. To put it tersely, learned counsel contends that, under the said loan agreement, names of "District Central Cooperative Banks" were joined as principal debtors of NABARD with the State Cooperative Bank. With these premises, it is contended that the guarantee furnished by the State Government, vide

annexure "I" dated 11th March 1993, is construed as guarantee by the State Government for repayment of loan raised by the District Central Cooperative Bank from NABARD. Hence, the basic condition required for exercise of power under Section 80(1) of the Act exists in the present case and the power has been validly exercised.

In this connection, Ms. Shah, learned counsel appearing for respondent No.6, relying upon the affidavit-in-reply filed on behalf of the State Government, contended that the State Government has invested huge amounts in the Subsidiary State Partnership fund of the petitioner bank, balance of which at the end of 30th September 1995 was Rs.12.5 lakhs and the State Government has contributed to the share capital of primary agricultural cooperative societies, the amount of which has been routed through the District Cooperative Bank as per the provisions of the Act. It is further urged that, as a result of contribution by the State Government to the Subsidiary State Partnership fund, the State has indirect interest in the petitioner bank which is of financial character and therefore the State Government is competent to nominate its representatives on the Committee of the petitioner-Bank.

Mr.Vakharia, learned counsel for the petitioner, in response, submits that, firstly, the State Government in no sense of words can be held as guarantor for repayment of loan raised for and on behalf of the petitioner-bank to put it in a position to nominate its representatives on the Committee of the petitioner, as guarantor for repayment of any loan raised by the petitioner and for payment of interest thereon. Secondly, at any rate, even if it is accepted that two documents relied on by the learned Government Pleader constitute indirect guarantee by the State Government for repayment of loan referred to in the sanction letter dated 26th September 1992 which was to be made available to the petitioner-bank by the State Cooperative Bank. The loan in its entirety was repaid on 21st November 1993 though last instalment was to be paid in June 1996. After payment of principal sum, and interest amount thereon to the State Cooperative Bank from whom the petitioner-Bank has raised loan, no amount of loan or interest thereon remains payable by the petitioner Bank for which relationship of guarantor and principal debtor could exist between the State and the petitioner-Bank. Therefore, even if the State Government can be said to be guarantor for repayment of loan or credit facilities which were made available to the State Cooperative Bank by NABARD, guarantee in so far as the petitioner-bank is

concerned was only restricted to the extent of loan borrowed by it and interest thereon and no obligation as guarantor vis-a-vis petitioner-bank for repayment of loan by the petitioner existed after repayment of loan and interest by the petitioner to the State Cooperative Bank. That was the position according to the learned counsel for the petitioner which came into existence way back in November 1993 when the question of nominating members by the State Government on the Committee of the petitioner-society was not at all in contemplation. It was also urged that by contribution to Subsidiary State Partnership fund to be operated by the petitioner-bank, the State could at best be said to have subscribed share capital of primary societies only but by contributing either to the Subsidiary State Partnership Fund or Principal State Partnership Fund, the State does not become subscriber to the share capital of the petitioner-society directly or through such contribution inasmuch as it is nobody's case that any shares of the petitioner-society has been acquired by another society out of that fund.

As a subsidiary limb of this contention, it was also urged that the District Central Cooperative Bank having repaid or returned the amount to the State Cooperative Bank, from which it has received the amount, it was under no obligation to oversee the function of the State Cooperative Bank for repayment of the amount by the State Cooperative Bank to the NABARD. If the State Cooperative Bank has not repaid the amount received from the District Central Cooperative Bank to NABARD, it cannot be construed as continuance of any liability on the part of the District Central Cooperative Bank in respect of repayment of that loan, and all sureties executed for and on behalf of the repayment of that loan by the Central Cooperative Bank stand discharged no sooner the amount is repaid by the District Central Cooperative Bank to the State Cooperative Bank.

I have carefully considered the rival contentions and perused records and materials placed before me.

It would be appropriate to refer to the relevant provisions of the Gujarat Cooperative Societies Act, 1961 and the National Bank for Agriculture and Rural Development Act, 1981. to which reference has been made during the course of arguments.

"Gujarat Cooperative Societies Act, 1961

80. Power to appoint government nominee:-

(1) Where the State Government has subscribed to the share capital of a society, directly or through

another society, or has guaranteed the repayment of the principal of and payment of interest on, debentures issued or loans raised by a society, the State Government shall, notwithstanding anything contained in the bye-laws of such society, have the right to nominate three representatives on the Committee of such society, in such manner as may be determined by the State Government from time to time. The members so nominated shall hold office during the pleasure of the State Government, or for such period as may be specified in the order by which they are appointed, and any such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he were a member of the committee duly elected.

Explanation: Any nomination of the Registrar or his nominee on the Committee of a society under the bye-laws of such society shall not be construed as nomination of the representative on that Committee in exercise of the right of the State Government under this sub-section.

(2) Where the State Government is of the opinion that having regard to the public interest involved in the operation of society it is necessary or expedient so to do, it may nominate its representatives on the committee of such society as if the State Government had subscribed to the share capital of the society and the provisions of sub-section (1) shall, so far as may be apply to such nomination."

National Bank for A & R. Development Act, 1981

Chapter VI

CREDIT FUNCTION OF THE NATIONAL BANK

21. Production and marketing credit:-

(1) The National Bank may provide by way of refinance, loans and advances, repayable on demand or on the expiry of fixed periods not exceeding eighteen months, to State cooperative banks, regional rural banks, or to any financial institution or to any class of financial institutions, which are approved by the Reserve Bank in this behalf, for financing

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- (i) agricultural operations or the marketing of crops, or
- (ii) the marketing and distribution of inputs necessary for agriculture or rural development, or

- (iii) any other activity for the promotion of or in the field of agriculture or rural development, or
 - (iv) bond fide commercial or trade transactions, or
 - (v) the production or marketing activities of artisans or of small-scale industries, industries in the tiny and decentralised sector, village and cottage industries or of those engaged in the field of handicrafts and other rural crafts.
- (2) The National Bank may make loans and advances under sub-section (1) against the security of -
- (i) stocks, funds and securities other than immovable property, in which a trustee is authorized to invest trust money by any law for the time being in force.
 - (ii) promissory notes supported by documents of title to goods, such documents having been transferred, assigned or pledged to the borrowing institution as security for a loan or advance made for any of the purposes specified in sub-section (1):

Provided that the National Bank may, whenever it considers it necessary so to do, accept, in lieu of the actual assignment of any such security in favour of the National Bank, a declaration in writing from the borrowing institution,-

- (a) stating that it holds such documents of title to goods as may be set out in the declaration; and
 - (b) containing such other particulars as may be required by the National Bank.
- (3) Notwithstanding anything contained in sub-section (2), the National Bank may in its discretion grant a loan or advance-
- (1) to any State Cooperative bank if the loan or advance is fully guaranteed for repayment of principal and interest by Government;
 - (b) to any State cooperative bank which is a scheduled bank, if the loan or advance is secured either by a bill of exchange or promissory note executed by the central cooperative bank and assigned in favour of the State Cooperative Bank.
- (4) Notwithstanding anything contained in sub-sections (2) and (3), the National Bank may also make loans and advances repayable on demand or on the expiry of fixed periods not exceeding eighteen months against promissory notes of a State cooperative bank or a regional

rural bank or an institution approved under sub-section (1);

Provided that the borrowing institution furnishes a declaration in writing, setting out the purpose for which it has made loans and advances and such other particulars as may be required by the National Bank.

22. Conversion loan for production credit-

- . Where the National Bank is satisfied that owing to drought, famine or other natural calamities, military operations or enemy action, any State Cooperative bank, regional rural bank or any such financial institution or any financial institution falling under any such class of financial institutions, as may be approved by the Reserve Bank in this behalf, requires assistance under this section, it may provide to such bank or institution such financial assistance as it may deem fit by way of making loans and advances repayable on the expiry of fixed periods not exceeding seven years and on such terms and conditions as may be specified in this behalf by the National Bank.

Provided that loans and advances may be made under this section only for the purpose of enabling the borrowing bank or institution,-

- (i) to pay any dues to the National Bank for credit extended for financing agricultural operations or the marketing of crops under clause (i) of sub-section (1) of section 21, or
- (ii) to make to central cooperative banks or primary rural credit societies, loans or advances repayable on the expiry of fixed period not being less than eighteen months and not exceeding seven years, by way of reimbursement of loans and advances made by such cooperative banks or societies for agriculture or agricultural operations or for reimbursement of such loans or advances which have been converted into loans or advances repayable on expiry of fixed periods not being less than eighteen months and not exceeding seven years from the date of conversion:

Provided further that no loan or advance shall be made under this section to a State cooperative

bank unless such loan or advance is fully guaranteed as to the repayment of the principal and payment of interest, by the State Government."

Reference to the aforesaid provisions is necessary to construe the true import of transaction and its effect on the provisions of the Act, which authorise the State Government to nominate its representative on the Board of any society. It is paramount importance to notice that, primarily, in this petition we are concerned with the authority of the State Government to nominate its representative in addition to the elected members on the Committee of the cooperative society, which is governed by the provisions of the Act. Inter-responsibilities, liabilities and execution of scheme of the financial societies for the purpose of which the Act of 1981 was enacted are not the purport of this controversy. What are the respective rights in repayment and recovery of the amount in case the same are not paid, are not the concern of this discussion.

At this stage, it may be noticed that, under the scheme of the Act it is not any and every kind of financial assistance or any and every financial interest, which the State Government may have, does not entail it to nominate its representative on the Committee of such a society. It is only confined to the financial interest which the Legislature had specified in the provision conferring power on the State..

it to exercise that power and no other interest outside that limit can confer that power on the State Government. In this connection, If one refers to refer to Chapter V of the Act which provides for State Aid to Societies, the first and foremost form of State Aid to societies is direct subscription to the share capital in the society. That is provided under Section 51 of the Act. Other form of State Aid to societies has been envisaged in the form of creation of Principal State Partnership Fund and Subsidiary State Partnership Fund for the purpose of indirect partnership of the State Government in the cooperative societies. Apart from these two provisions, Section 63 envisages other forms of State Aid to societies, which reads as under:

"63. Other forms of St..

Notwithstanding anything contained in any law for the time being in force, but subject to such conditions as the State Government by general or special order may specify in this behalf, the State Government may,-

- (a) give loans to a society.
- (b) guarantee the payment of the principal of debentures issued by a society, or of interest

thereon, or both, or the repayment of the share capital of a society to its members, or the payment of dividends thereon at such rates as may be specified by the State Government;

- (c) guarantee the repayment of the principal of and the payment of interest on, means given by a Cooperative Bank to a society;
- (d) guarantee the repayment of the principal....

payment of interest on, loans and advances given by the Reserve Bank of India, or the Industrial Finance Corporation of India, or any other authority constituted under any law for the time being in force, or

- (e) provide financial assistance, in any other form (including subsidies), to a society."

It is, therefore, apparent that, under the Statute itself, widest possible amplitude of the financial assistance by the State is envisaged in the development of a cooperative society. While it can subscribe share capital by itself, it can subscribe share capital by purchasing shares in other societies through the apex society with the aid of Principal State partnership Fund or by purchasing shares in the primary societies through the central society with the aid of Subsidiary State Partnership Fund or the fund provided by apex society from the Principal State Partnership Fund in terms of Section 53(2)(b). Principal State Partnership Fund as well as Subsidiary State Partnership Fund can be utilised for other purposes also apart from purchasing shares as stated above in other societies. Apart from these two, there are other forms of State aid to societies, namely, the State Government may itself give loans to a society; it may guarantee the payment of the principal of debentures issued by a society, or of interest thereon, or both; it may also guarantee the repayment of the share capital of a society to its members, or the payment of dividends thereon at such rates as may be specified by the State Government; it may also extend financial aid to a society by standing guarantee for repayment of the principal of and the payment of interest on the amounts given by such cooperative society to another society, that is to say, not for repayment of loan received by the society itself, but for recovery of loan advanced by it in the situation where the State Government has subscribed directly to the share capital of a society (as envisaged under Section 51 of the Act) or through another society (as envisaged under Sections 53(2)(a) and 54(2)(a) of the Act) or where the State Government has guaranteed repayment of the principal of the debentures issued by a society (as envisaged by the first part of clause (b) of Section 63) and, lastly, where the State Government has

guaranteed repayment of the principal of, and payment of interest on, loans and advances raised by a society governed by clause (d) of Section 63 of the Act. All the form of State financial assistance referred to in Section 80(1) are part of specific statutory provision under Chapter V, but such power under Section 80(1) does not extend to the entire sphere of financial assistance envisaged to be extended by the State.

In view of these clear provisions, broad contention raised by the learned counsel for the nominated members that, merely because the State Government has contributed to the Subsidiary State Partnership Fund a substantial amount of Rs.12.5 lakhs for acquiring shares in other primary societies, the condition of State having financial interest within the meaning of Section 80(1) of the Act should be deemed to be in existence, cannot be accepted. What is required is subscription to the shares of society concerned by the State either directly or through other societies. From the averments made in the pleadings, it is apparent that the State Government has not subscribed directly to the share capital of the petitioner-society. It is not the case of anybody that, through contribution made to the Principal State Partnership Fund, the apex society had purchased shares of the petitioner-society. Subsidiary State Partnership Fund does provide that as regards moneys received by an apex society from the Principal State Partnership Fund, a central society shall utilise that fund only for the purpose of purchasing shares from the primary society and, according to the averments made in the petition, it has been so utilised by the central bank. By this acquisition, it can only be said that the State Government has acquired shares and subscribed to the share capital of the primary societies through central bank. But, on no reasoning, it can be said that by contribution to the Subsidiary State Partnership Fund, the State Government subscribed to the share capital of the petitioner-bank through that fund. It cannot also be urged on that basis in view of the provisions of the Act that contribution to the fund amounts to loan raised by the central society for repayment of which the State Government has stood guarantee. From Section 61, it is apparent that the amount standing to the credit of fund is not an asset or liability of the central society. Nor from any of the provisions it appears that repayment of contribution made to the Principal State Partnership Fund or the Subsidiary State Partnership Fund is responsibility or liability of the apex society or the central society as the case may be. On the contrary, it is envisaged under Section 56 that where any shares are purchased in a society by the State Government directly or participation through the Principal

State Partnership Fund or the Subsidiary State Partnership Fund, liability in respect of shares is limited to the amount paid in respect of such shares. Section 58 of the Act envisages that if a society in which shares are purchased out of the Principal State Partnership Fund is wound up, the State Government shall have no claim either against the Apex society or against central society in respect of any loss arising from such purchases. The only consequence of such winding up of the society whose shares have been purchased is that all moneys received against such shareholding by the apex society shall be the entitlement of the State Government and such amount received by the central society shall be credited to the Principal State Partnership Fund. Return on the contribution made to the Principal State Partnership Fund or the Subsidiary State Partnership Fund is to be dealt with only in the manner specified in Section 59 of the Act making it clear that there is no responsibility of repayment of sum as loan at any stage. Section 60 envisages that where an apex society is wound up, all moneys at the credit of, or payable to that fund, shall be paid to the State Government and in case of winding up of the central society, the amount standing in the credit of Subsidiary State Partnership Fund is to be credited to the Principal State Partnership Fund from which it has received money under Section 53. Thus, under the scheme of Chapter V, no repayment much less guarantee by the State Government for repayment of amount contributed to the fund has been envisaged so as to place it in a position of guarantor for repayment of the principal of and payment of interest on loans raised by a society, authorising it to nominate its representatives on the Board of a society.

If, in context of current issue, the statutory scheme of the Act of 1981 is viewed, it is obvious that no direct dealing by the NABARD with the Central Cooperative Bank is envisaged, unless such Bank is approved by the Reserve Bank of India in this behalf. Sub-section (1) of Section 21 of the Act of 1981 envisages that the National Bank may provide by way of refinance, loans and advances to the State Cooperative Banks, Regional Rural Banks or to any financial institution or to any class of financial institutions which are approved by the Reserve Bank of India in this behalf. So also Section 22 of the Act of 1981 envisages that where the National Bank is satisfied that owing to drought, famine or other natural calamities, military operations or enemy action, any State cooperative bank, regional rural bank or any such financial institution or any financial institution falling under any such a class of financial institutions, as may be approved by the Reserve Bank in this behalf, requires assistance, then it

may provide to such bank or institution such financial assistance as it may deem fit. Therefore, under the very scheme of things of the statute under which NABARD has been constituted, there is no direct credit facility of loan or advance or overdraft facilities to the Central Cooperative Societies unless approved by the Reserve Bank of India. Secondly, while Section 21 deals generally with providing loans and advances by way of refinance repayable on demand or on the expiry of fixed periods not exceeding eighteen months to the abovenamed institutions, Section 22 envisages that on the happening of the contingencies referred to above, namely, drought, famine or other natural calamities, military operations or enemy action, the National Bank may provide financial Assistant to the State Cooperative Bank or other financial institutions referred to above. Thirdly, it is to be noticed that operation fields of Section 21 and Section 22 are both distinctly demarcated inasmuch as the purpose for which refinance is given has been stated in Section 21 and the manner of utilisation of financial assistance in case of contingencies referred to Section 22 have also been clearly stated in the statutory provision itself. Keeping in view these two different areas of operation, ancillary provision has also been made differently in these two provisions. Where the National Bank provides loans and advances for refinancing the loans and advances made by the State cooperative Bank, to regional rural banks, or to any other financial institutions, for the purpose of financing agricultural operations or the marketing of crops or the marketing and distribution of inputs necessary for agriculture or rural development or bona fide commercial or trade transactions or the production or marketing activities of artisans or of small-scale industries, industries in the tiny and decentralised sector, village and cottage industries or of those engaged in the field of handicrafts and other rural crafts, primarily, NABARD has to make such credit facilities to the State cooperative bank against security of stocks, funds and securities other than immovable property, promissory notes supported by documents of title to goods, such documents having been transferred, assigned or pledged to the borrowing institution as security for a loan or advance made for any purposes specified above. As an exception, it has been stated that, without insisting on the security mentioned in sub-section (2) of Section 21, the NABARD may, in its discretion, grant a loan or advance to any State cooperative bank, if the loan or advance is fully guaranteed for repayment of principal and interest by the Government or where such advance is given to any State cooperative bank which is a scheduled bank, if the loan or advance is secured either by a bill of exchange or promissory note executed by the Central Cooperative Bank

and assigned in favour of the State cooperative bank, it is obligatory for extending financial assistance under Section 22 that such loan or advance which is to be made to the borrowing bank is fully guaranteed for repayment of principal and interest by the State Government. That is to say, while extending financial assistance under Section 22, guarantee by the State Government for repayment of the said sum is an essential condition.

One thing which stands out clearly that where the financial assistance is extended for the purpose of refinance under Section 21 or for the purposes stated in Section 22 to meet the necessity which had arisen out of the contingencies like drought, famine or other natural calamities, etc., the borrowers are the persons mentioned in these statutory provisions, and none else, and they happened to be State Cooperative Bank, regional rural bank or any such financial institution or any financial institution falling under any such class of financial institutions which have been approved by the Reserve Bank of India in this behalf. Central Cooperative Bank, Scheduled Bank, State Cooperative Bank and Regional Rural Banks have all been defined in Section 2 of the Act. This clearly envisages that the Central Cooperative Bank is not treated as borrowing bank unless so specified by the Reserve Bank of India in this behalf for the purposes of Sections 21 and 22 of the Act of 1981. Borrower, in my opinion, in either case remains State Cooperative Bank or other institutions to which the credit or financial assistance has been extended by the NABARD.

As present is a case in which on account of situation arising out of famine of 1991 in certain areas in Gujarat, the National Bank has chosen to extend financial assistance in terms of Section 22 of the Act of 1981, a pointed reference to the said provision makes it clear as to who the borrower is. First proviso to Section 22 of the Act of 1981 envisages that loans and advances may be made only for the purpose of enabling the borrowing bank or institution firstly to pay any dues to the National Bank for credit extended for financing agricultural operations or the marketing of crops under clause (i) of sub-section (1) of Section 21, or, relevant for our purpose, to make to central cooperative banks or primary rural credit societies, loans or advances repayable' x x x x x x " This provision clearly envisages that while the State cooperative Bank assumed the position of borrower vis-a-vis the NABARD, it has to utilise the financial assistance made available to it as payable for the purpose of transmitting it to the central cooperative bank by way of making loans or advances to them, which is repayable on expiry of the

fixed period specified in the provisions and such loan and advance which is to be made by the borrowing bank is to be utilised by the subsidiary borrower as reimbursement of loans and advances made by such subsidiary borrower to every subsidiary borrower down the ladder. That is to say, under the scheme of making available financial assistance to the end consumer, who is the real sufferer on account of drought or famine, a number of intermediary borrowers from the stream has been envisaged. The primary lender is the NABARD which offers loans to the State Cooperative Bank. The State Cooperative Bank lends money to Central Cooperative Bank as reimbursement of loans extended by it to the primary societies and the primary societies in their turn on the borrowing money from the Central Cooperative Bank extends benefits to the end consumer by way of reimbursement of loans or advances by it and, at all levels, repayment of such credit facility would spread over to a fixed period not less than 18 months and not more than 7 years as the case may be. At each stage, loan is repayable to one from whom it has been received. In this hierarchy, it is not the envisaged position that each and every subsidiary borrower becomes principal debtor of the NABARD, as contended by the learned Government Pleader. That would amount to reading contrary to the plain meaning of the Statute. It is also clear that guarantee from the State Government for repayment of loan is only envisaged at the stage of extending financial facility to the State Cooperative Bank and not down below. So to say, under the scheme of the statutory provisions, there is no room to envisage that if the borrowers down below the ladder failed to fulfill their obligations to immediate financier or the authority financing loan, the State Government had stood guarantor for such repayment as well. The statutory provision merely envisages that the Stat...

guarantor for repayment of loan by the State cooperative bank to the National Bank who has extended financial assistance, either by way of loan or advance or otherwise and for none else. However, this statutory provision does not preclude the State Government from giving guarantee for repayment on behalf of the subsidiary borrowers if there is an agreement to that effect. We may examine whether the State Government can be said to have stood guarantor for repayment on behalf of the subsidiary borrowers at all.

Whatever might have been the terms of the borrowing between the lender and the borrower envisaged under the document dated 26th September 1992, so far as Resolution containing the guarantee of the State Government is concerned, it reads as under:

"Government is.....

amount of Rs.124.43 crores (Rupees one hundred twenty four crores and forty three lakhs only) for loans from the Agricultural Credit (Stabilisation) Fund, in respect of principal and interest, to be obtained by the Gujarat State Cooperative Bank Ltd, Ahmedabad, from the National Bank for Agriculture and Rural Development (NABARD) Ahmedabad for financing District Cooperative Banks for conversion of Kharif-1991 short term loans into medium term loans, under section 22 of the NABARD Act, 1981."

This document clearly puts the State Government in place of guarantor for repayment in respect of principal and interest to be obtained by the Gujarat State Cooperative Bank, Ahmedabad, from NABARD. Merely because the purpose of obtaining this loan by the State Cooperative Bank from NABARD has been stated to be "for financing District Cooperative Banks", it cannot be stated that the State Government had stood guarantor for repayment of loan by the Central Cooperative Bank.

Question which one would ask oneself to discern whether any guarantee vis-a-vis the Central cooperative bank exists, is whether in case the Central cooperative bank fails to make payment in time stipulated under its agreement of loan terms with the State Cooperative Bank, can the guarantee contained in document dated 11th March 1993 be invoked by the person in whose favour the guarantee stands, namely, the NABARD. I do not think so that, under any circumstances, the NABARD has any authority to invoke the guarantee for enforcement of payment by the Central Cooperative Bank, It can invoke guarantee only for nonpayment of its dues from the State Cooperative Bank when it has fallen due. For failure of a subsidiary borrower to pay sum to the surety from whom financial assistance has come, the State Government is nowhere responsible for enforcing such payment. The fact that the Central Cooperative Bank has executed a promissory note in favour of the State Cooperative Bank, which in turn was endorsed in favour of the NABARD, only leads to a conclusion that the principal borrower being State Cooperative Bank, the NABARD has not rested with the guarantee furnished by the State Government but has further secured repayment of its loans from the State Cooperative Bank by procuring additional security by way of documents or bills of exchange which the State Cooperative Bank has secured in its favour from the persons to whom it has advanced loan and from whom it has to receive repayment, and which has been endorsed in favour of the principal creditor, given by the subsidiary borrowers by way of negotiation, which may be encashed on its maturity

directly. But that position does not place the State Government in position of guarantor for repayment of amount by the subsidiary borrower - in the present case Central Cooperative Bank to NABARD. Both, State as well as Central Bank stand in identical position with NABARD viz while State Government stands guarantee for repayment by State Cooperative Bank, the pro-note executed by Central Cooperative Bank in its endorsement in favour of NABARD becomes security in the hands of NABARD. It is relevant to notice that NABARD has not extended credit facility to State Cooperative Bank in consideration of pronote executed by Central Cooperative Bank, but on advancing loan it has been secured as security for its repayment from principal debtor the State Cooperative Bank. That endorsement does not absolve State Cooperative Bank of primary responsibility nor does it denude it of its status as principal borrower. Securing endorsement by NABARD in its favour of promote executed by Central Cooperative Bank in favour of State Cooperative Bank on receiving loan, has no effect on guarantee arrangement which has already come into existence between NABARD and State of Gujarat on sanctioning of credit facilities.

If endorsement of pro-note is taken to be assignment of debt by the State Cooperative Bank to the NABARD, it will result in discharge of debt by the State Cooperative Bank to NABARD putting the Central Cooperative Bank in the position of principal debtor. But with that guarantee of State also will too come to ...

Cooperative Bank, inasmuch as with the discharge of liability of State Cooperative Bank, guarantee will also be discharged.

A great emphasis has been laid about the user of the words by the National Bank in its sanction letter dated 26th September 1992, "Medium-term conversion loans sanctioned to Gujarat State cooperative Bank Limited on behalf of twelve DCCBs on account of failure of Kharif 1991 crops".

A close scrutiny of the document only reveals that this document has been formulated on the lines envisaged under Section 22 of the Act of 1981. It reads:

"We hereby sanction to your bank the Gujarat State Co-op. Bank a medium term credit limit of Rs.12443.04 lakhs (Rupees Twelve Thousand four hundred forty three

National Bank for Agriculture and Rural Development

Act, 1981, to enable it to convert its short term dues to the National Bank in respect of the borrowings made by it under Section 21(1)(i) read with Section 21(3)(a) or Section 21(3)(b) of the National Bank for Agriculture and Rural Development Act, 1981, for financing seasonal agricultural operations through the Central Cooperative Banks as per list annexed hereto."

This clearly envisages that the financial assistance has been extended to the Gujarat State Cooperative Bank for the contingencies envisaged under Section 22 of the Act of 1981, namely, failure of Kharif crops of 1991, which fund can be utilised by the users as per clause (xi) of the document and as envisaged in clause (ii) of the first proviso to Section 22. Credit facility is extended for enabling it to finance agricultural operations or the marketing of crops through the Central Cooperative Banks which is the only mode through which the financial assistance provided under Section 22 of the Act of 1981 or by converting short term dues to the National Bank into medium term credit can be extended to the users under Section 22. As discussed above, Section 22 envisages that the State Cooperative Bank is the only envisaged borrower of the NABARD which in turn further becomes in its own capacity as lender for the Central Cooperative Bank who becomes the borrower vis-a-vis the State Cooperative Bank. Likewise, the Central Cooperative Bank becomes lender vis-a-vis the primary cooperative societies and, ultimately, the primary cooperative societies become lender for the agriculturists who become the borrower. Therefore, the document relied upon by the learned Government Pleader nowhere reflects upon the position of creditor, borrower and subsidiary borrower vis-a-vis each other different from what has been envisaged under Section 22 of the Act of 1981 to put the petitioner-society in a position of principal debtor along with the State Cooperative Bank.

The fact that for each District Central Cooperative Bank, a specified sum is earmarked for financial assistance to the extent to which the NABARD has committed itself to contribute financial assistance does not make the 11 District Central Cooperative societies as principal debtors of the NABARD in that sense along with the State Cooperative Bank. It is interesting to note that notwithstanding use of the word "on behalf of 11 DCCS", it is not the contention of the State that the District Central Cooperative Societies are the debtors and the Gujarat State Cooperative Bank is merely a catalyst and not in the status of a debtor at all, because, literally speaking, the contention of Mr. Anand

leads to the interpretation that because the Gujarat State Cooperative Bank is a party acting on behalf of "11 DCCS" notwithstanding there being no privity of contract between the district central cooperative banks and the NABARD, DCCS become principal debtors as borrowers. If DCCS become borrowers merely because of use of this phraseology, only logical conclusion is that the Gujarat State Cooperative Bank has acted as mediator and cannot be placed in the position of borrower. But obviously that is not so.

Assuming for the sake of argument that because of the said scheme of disbursement of loan to the agriculturists and because of the fact that the loan has been advanced for financing the District Central Cooperative Banks named in the Schedule and money has been received by the State Cooperative Bank on behalf of those District Central Cooperative Banks which makes such Central Cooperative Banks as joint principal debtors, document at Annexure "I" still does not make the State Government as guarantor for repayment of loan and interest on behalf of the petitioner-Bank. Guarantee merely exists in that connection for repayment of Gujarat State Cooperative Bank Limited and no one else, or to say that, out of two joint promisors, the State Government stood guarantor for repayment only on behalf of one of the joint promisors. If that is so, then also it cannot be said that for the purpose of Section 80(1) of the Act, the State Government is guarantor for repayment of loan raised by the District Central Cooperative Bank. In the scheme of Section 80(1) of the Act, it must mean that the guarantor must be for repayment of loan by the concerned society and not guarantor for repayment of loan by any third party in whose Board the State is not concerned for nominating its representative.

The statutory provision 'where the State Government has guaranteed the repayment of the principal of and payment of interest on the loans raised by a society' enables the State Government to nominate its representatives on the committee of such societies, leads to no other conclusion that guarantee for repayment of loan must be in respect of discharge of liability by the society on whose committee, the State Government intends to exercise right to nominate its representatives and does not have such right in respect of any other society. This is also clear from various provisions of the Act, as discussed above, that it is not every financial interest of the State Government, direct or indirect, in the society which confers power upon the State Government to appoint its nominees on the committee in so far as exercise of power under sub-section (1) is concerned. If out of two joint-promisors, State has stood guarantee for non-payment by one only, it does not acquire such right

under Section 80(1) in respect of that society for whose discharge of liability, it had not stood guarantor.

Even if, for the sake of argument, we assume that the guarantee which the State Government has undertaken for repayment of loan by the State Cooperative Bank to NABARD, results in conferment of such power on the State Government even in respect of such societies on behalf of whom repayment of loan has been guaranteed by the State Government, then too, in my opinion, the State Government denuded its power in respect of the petitioner-society since it has discharged its liability to repay financial assistance received by it under the scheme. It is not disputed that the petitioner society had repaid loan amount as well as interest amount payable on it to the State Cooperative Bank by November 1993 notwithstanding the fact that under the scheme the principal and interest amounts were payable in three equal installments falling due on 30th June 1993, 30th June 1994 and 30th June 1995. It needs no elaboration that guarantee can only coexist in respect of the liability of the borrower to repay and it cannot survive beyond it. Once

liability to repay, the guarantor to the extent it binds in respect of that borrowing, does not bind thereafter.

It may be noticed that this Court, in Special Civil Application No.10206 of 1995 and allied matters, decided on 29th February 1996, had aptly stated general principle:

"However, any member Union not receiving the loan under the arrangement would not be a Society in respect of whom the State Government can be said to have guaranteed repayment of loan. It would follow, therefore, that if a recipient Union has already repaid the loan, then also in respect of such Union it cannot be said that the State Government continues to guarantee repayment of loan which already was repaid. Therefore, even i.....

Unions of GCMML like the petitioners have repaid the entire loan amount, the State Government cannot be said to be continuing as a guarantor in respect of such member Unions and therefore, no appointment of nominees can be made by the State Government on their Board of Directors on the ground that some other recipient Union which is an independent legal entity had not repaid its loan to the GCMML or the creditor."

Controversy in the aforesaid case had arisen in the circumstance where the State Government had nominated its representatives on the committee of the societies who had procured loan from the Gujarat Cooperative Milk Marketing

Producers' Limited, of which the petitioners were members. The Federation itself had procured loan from the National Dairy Development Board. Principal creditor who has provided financial assistance to the NDDB was Indian Dairy Corporation. The State Government had stood guarantee for repayment of loan by the NDDB to the IDC. Subsequently, the State Government was released by the principal creditor of the guarantee by the successor-in-creditor, NDDB. Position of the petitioner-society in that case was of the like nature with the Central Cooperative Society in the present case. However, one distinct feature of which pointed notice was taken by the court was that the documents and record produced before the court led the court to conclude that 'main loan agreement, subsequent loan agreement, government resolutions sanctioning guarantee and guarantee bond themselves indicate that the State Government had stood surety even in respect of defaulters in repayment of loans that may be committed by the member-union of the GCMFL.' No such documentary evidence has come forth in the present case from which it can be held that the State Government stood surety even in respect of defaults in repayment of loan that may be committed by the Central Cooperative Banks. I have noticed these facts only in order to stress that an investigation to find out whether the State Government was guarantor in respect of repayment of loan by the subsidiary borrower was necessary to be undertaken to find out whether the State Government had necessary authority in terms of Section 80 (1) of the Act to nominate its representatives on the committees of the various cooperative marketing societies vis-a-vis the petitioner in Special Civil Application No. 10206 of 1995 and allied matters. If the contention of the learned Government Pleader, as has been raised in the present case, was to be accepted, there was no need for such investigation to find out whether the State Government stood as guarantor for subsidiary borrower inasmuch as the scheme of disbursement of financial assistance for the purpose of making available to the end consumer was almost similar. Contention on behalf of the State, which is vehemently pressed into service, that guarantee for repayment of loan, envisaged under Section 80 of the Act as well as under Section 22 of the Act of 1981, refers to repayment of loan to the principal creditor whether by the State Cooperative Bank or the District Central Cooperative Bank, and unless the amount paid by the petitioner society reaches the NABARD, the guarantee in respect of payment of that loan accepted by the State Government continues to exist and, therefore, power to appoint government nominee also continues to exist until such time, does not commend itself. This contention takes me back to the provisions of the Act of 1981. A close look at Section 22 of the Act of 1981 makes it abundantly clear that under the scheme the first step is providing financial

assistance by the National Bank to the State Cooperative Bank. So far as conditions for extending financial assistance to the State Cooperative Bank are concerned, they are twofold. Firstly, the loans and advances that may be made under Section 22 of the Act of 1981 can only be for the purpose of enabling the borrowing bank as disclosed in clauses (i) and (ii) of the first proviso reproduced hereinabove. The second condition which is embedded in second proviso is that such loan or advance can be made under this provision to a State Cooperative Bank only on the condition that, as to repayment of the principal and payment of interest, the State Government guarantees it. This proviso leaves no room of doubt that the principal creditor in terms of the guarantee envisaged is the National Bank, borrower is the State Cooperative Bank and the guarantor is the State Government. Thus, repayment in the second proviso is in no way connected with the repayment by the Central Cooperative Bank to the State Cooperative Bank or to the NABARD. In fact, payment from the Central Cooperative Bank to the NABARD directly is not at all envisaged. On the contrary, clause (ii) of the first proviso further makes it clear that the borrowing bank has to grant loans or advances to the central cooperative banks or primary rural credit societies, which is repayable on expiry of fixed periods, limits of which has been stated in the said clause itself. Repayment of loan or advances made to the central cooperative banks or primary rural credit societies unequivocally refers to repayment of loans made by the borrowing bank to the State Cooperative Bank. By no stretch of imagination, it can be referable to any obligation on the part of the central cooperative bank for repaying loan which has been made available to it by the borrowing bank directly to the principal creditor, namely, the National Bank. Therefore, not only the scheme of disbursement and utilisation has been made clear by the Statute itself, but the scheme of repayment has also been indicated in the scheme. To say in other words, the amount is to be paid by whom to whom has been made clear in the Statute and it would be too much to read merely because in the title of the annexure to the sanctioning letter of the financial assistance by the NABARD used the words "Medium-term (conversion) loan sanctioned to the Gujarat State Cooperative Bank Limited on behalf of eleven DCCS on account of failure of Kharif 1991 crops". Term used in annexure I is merely recognition of the statutory provisions about utilisation of the loan by the district cooperative banks for the purposes mentioned in clause (ii) of the first proviso to Section 22 of the Act of 1981.

It is undoubtedly true that unless the State Cooperative Bank makes payment to the National Bank, liability of the State Government as guarantor to the extent

loan remaining unpaid by the State Cooperative Bank continues to be alive. Merely the Central Cooperative Bank has discharged its obligation to the State Cooperative Bank by repaying loan would not discharge the State Government from its guarantee obligation for discharge of obligation of the State Cooperative Bank towards the National Bank. But the fact that guarantee of the State Government is existing vis-a-vis the principal borrower in respect of the entire amount does not lead to any conclusion, in the context of the provisions of Section 80(1) of the Act, that, notwithstanding discharge of its liability for payment of loans raised by it, the Central Cooperative Bank continues to be under the rigors of the provisions of Section 80 of the Act, because the Gujarat State Cooperative Bank has not paid, in its turn, the amount recovered from the Central Cooperative Bank, to the National Bank. That would be contrary to all canons of interpretation of the statutory provisions. It is not because any amount which was payable by the Central Cooperative Bank in respect of financial assistance received by it from the State Cooperative Bank, remains outstanding towards the State Cooperative Bank. Fallacy of argument is further demonstrated of the fact that in order to determine any guarantor-principal debtor relationship, it must be shown that any liability remains to be discharged by such borrower or it can be recovered from such borrower along with guarantor. Can it be said that the Central Cooperative Bank once having paid to the State Cooperative Bank can be subjected to any recovery proceedings by any party in respect of that financial assistance which it had received from the State Cooperative Bank which was made available to the State Cooperative Bank by the NABARD. The answer must, in my opinion, be in plain negative.

It may be viewed in converse perspective. Can it be said that in case the State Cooperative Bank discharges its liability to the NABARD, but loan is still due from the Central Cooperative Bank to be repaid, the State can resort to Section 80(1) in respect of the Central Cooperative Bank. Obviously it cannot be so. So soon the State Cooperative Bank repays the amount back to the NABARD, the State will be released by its guarantee obligation altogether, notwithstanding loan to the Central Cooperative Bank still remains outstanding. Clearly guarantee agreement has nothing to do with loan to and its repayment by the Central Cooperative Bank.

Viewed from any angle, in my opinion, on the date when the State Government exercised power under Section 80(1) of the Act in respect of the petitioner-society for nominating its representatives on the committee of the

society, it did not fulfill condition precedent of either having subscribed to the share capital of the petitioner society or having stood guarantee for repayment of the principal of and payment of interest on the loan raised by the petitioner, as no loan raised by the petitioner remained outstanding against it, in respect of which, guarantee agreement could be enforced vis-a-vis obligation of the petitioner-society. The fact that the guarantee agreement can be enforced against the State Government in the event of of default on the part of the State Cooperative Bank would not make the committee of the petitioner-society within reach of the State Government enabling it to exercise power under Section 80(1) of the Act.

As a result of the aforesaid discussion, the petition succeeds. The impugned order dated 7th December 1995 nominating the respondents Nos. 4,5 and 6 as representatives by the State Government on the Committee of the petitioner, is quashed. Rule is made absolute. There shall be no order as to costs.

Ms. Shah, learned counsel for respondent No.6 prays for stay of operation of this order for a period of two weeks. In view of the fact that the nominated members do not have vested right to remain on the Board of the petitioner-society, this prayer is rejected.
